

**UNISDR's comments and observations on the draft articles  
on the "Protection of persons in the event of disasters"**

*General comments and observations*

1. The work of the International Law Commission on the topic of the "Protection of persons in the event of disasters" constitute a critical and timely contribution to the efforts of States and other stakeholders to manage disaster risk.
2. The Third United Nations World Conference on Disaster Risk Reduction, held in Sendai, Japan, in March 2015, adopted the *Sendai Framework for Disaster Risk Reduction 2015-2030* (Sendai Framework), which was subsequently endorsed by the United Nations General Assembly with resolution A/RES/69/283 on 3 June 2015.
3. The Sendai Framework recognizes that "each State has the primary responsibility to prevent and reduce disaster risk, including through international, regional, subregional, transboundary and bilateral cooperation".
4. Through the Sendai Framework, States committed to "prevent new and reduce existing disaster risk through the implementation of integrated and inclusive economic, structural, legal, social, health, cultural, educational, environmental, technological, political and institutional measures that prevent and reduce hazard exposure and vulnerability to disaster, increase preparedness for response and recovery, and thus strengthen resilience" in order to achieve "the substantial reduction of disaster risk and losses in lives, livelihoods and health and in the economic, physical, social, cultural and environmental assets of persons, businesses, communities and countries".
5. Overall, there is a strong alignment and complementarity as well as a functional relation between the draft articles and the Sendai Framework, in that the former articulates the duty to reduce the risk of disasters and to cooperate, and the latter articulates modalities and measures that States need to adopt to discharge such duty.

*Specific comments and observations*

Draft Article 3 and its Commentary

6. The proposed definition of disasters of draft article 3 poses a rather high threshold which leaves out disasters which are indeed considered under the Sendai Framework, in paragraph 15, namely small-scale disasters.
7. Research and experience indicate that small-scale disasters cause heavy losses, including in economic terms, thus negatively impacting on people resilience, exacerbating existing vulnerabilities and contributing to severe setbacks in human development. Small-scale disasters in their high frequency determine an ongoing erosion of development assets, such as houses, schools, health facilities, roads and local infrastructure. So far they have not received due attention and are often unaccounted for in statistics, thus leaving an incomplete picture concerning impact and consequences; indeed once the direct losses associated small-scale disasters are included, they determine an at least 50 percent increase of the overall direct losses.

8. It would be critical to ensure that the draft articles also concern small scale disasters, which by nature do not determine a “widespread loss of life” or “great human suffering” or “large-scale material or environmental damage”. Against this background, it is suggested to reconsider the inclusion of, and delete, the words “widespread”, “great” and “large-scale”, add the word “economic” after “environmental”, and adjust the commentary accordingly.

#### Draft Article 4 and its Commentary

9. Points (d), (e) and (f) include definitions which, while appropriate in the context of disaster relief, and indeed those terms are included in articles referring to relief, may not be applicable for the purpose of disaster risk reduction. Therefore, it is suggested to keep the proposed definitions, while deleting the references to “disaster risk reduction” on the basis of the following considerations.

10. The concept of external assistance put forward in draft article 4, and confirmed in articles 13 to 17 and 19, seems to apply to a State affected by a disaster. The inclusion of “disaster risk reduction” implies that the term “affected” includes not only affection by a disaster but also by “risk”. As such, it would be in contradiction with point (a) in the same article, and it would also widen that concept of “affected” beyond the scope and spirit of the whole set of draft articles.

11. In light of the proposed definition, “relief personnel” is concerned with relief operations. As also confirmed by the Sendai Framework, disaster risk management concerns measures that need to be taken to prevent that the conditions for a disaster are created and that a disaster materializes. Such measures need to be taken by all actors across all sectors during the normal course of affairs and, therefore, not by personnel engaged in relief.

12. Similarly, whereas the definition “equipment and good” per se seems appropriate, equipment and goods are referred to in draft articles 9, 17 and 18 which explicitly refer to, and concern, relief.

#### Draft Article 10 and its Commentary

13. Draft article 10 is very clear and its wording helps create a link with the measures envisaged not only in draft article 11, but also in the Sendai Framework, especially in the parts concerning cooperation at “global and regional levels” of the four priority areas and section VI on international cooperation and global partnership.

14. In light of the above, it may be helpful to include specific references to the Sendai Framework in point (2) of the commentary, at the very end: “...risk, **as well as the Sendai Framework’s parts concerning cooperation at “global and regional levels” of the four priority areas and section VI on international cooperation and global partnership**”.

15. Finally, should the article be incorporated in draft article 8, it is suggested to do it in the form of an independent paragraph and to preserve its current formulation.

#### Draft Article 11 and its Commentary

16. Draft article 11 is very welcome as it represents a critical advancement for disaster risk reduction and accountability in disaster risk management.

17. The Sendai Framework recognizes, in Guiding Principle (a), that “each state has the primary responsibility to prevent and reduce disaster risk”; this is echoed in the Goal to “prevent new and

reduce existing disaster risk". Moreover, the expected outcome concerns "the substantial reduction of disaster risk".

18. At the same time, in light of the Sendai Framework and the recognition in the commentary to the draft article that the emphasis and focus is on reducing disaster risk and not preventing disasters, some amendments may be considered in the text of draft article 11, namely in paragraph 1.

19. In particular, while the title of the draft article and main body of para 1 of draft art 11 refers to disaster risk, its closing "prevent, mitigate and prepare for disaster" still places emphasis on disasters.

20. The Sendai Framework goes beyond the focus on "disaster" and focuses on "risk" - and not only existing risk, but also future risk created through actions and investments which increase exposure, vulnerability and hazard's characteristics.

21. A possible alternative for paragraph 1 is suggested:

Each State shall reduce the risk of disasters by taking the necessary and appropriate measures, including through legislation and regulations, to prevent [ **the creation of new risk and reduce existing risk** /, mitigate, and prepare for disasters].

22. The commentary to the draft article is very strong and provide important guidance – including on due diligence, the obligation to put legal frameworks into place – which is also confirmed by the Sendai Framework and the approach to disaster risk managed enshrined therein,.

23. At the same time, in light of the rationale for the proposed amendments to paragraph 1 of draft article 11, it may be necessary to adjust the commentary in points (11), (15) and (16). In particular, in points (11) and (15), it is suggested to substitute "to prevent, mitigate and prepare for disasters" with "**to prevent the creation of new risk and reduce existing risk**", and, as a consequence, to delete point (16).

24. Finally, also the formulation of para 2 is very clear and consistent with the Sendai Framework. In this context, it is suggested to add at the end of point (17), after the word "future", the words "**in the implementation of the Sendai Framework**".